UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026 (REG)

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In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.,

f/k/a GENERAL MOTORS CORP., et al.,

Debtors.

- -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

April 29, 2010

5:24 PM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

HEARING re First Application of Weil, Gotshal & Manges LLP, as Attorneys for the Debtors, for Interim Allowance of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from June 1, 2009 Through September 30, 2009 [Docket No. 4803]

HEARING re First Interim Application of Kramer Levin Naftalis & Frankel LLP, as Counsel for The Official Committee of Unsecured Creditors, for Allowance of Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses Incurred for the Period from June 3, 2009 Through September 30, 2009 [Docket No. 4459] ("Kramer Fee Application") and Correction and Supplement to the Kramer Fee Application [Docket No. 4715]

HEARING re Application of Butzel, Long, a Professional Corporation, as Special Counsel to the Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation, for Interim Allowance of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from June 10, 2009 Through September 30, 2009 [Docket No. 4450]

HEARING re First Interim Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for Services Rendered in the Case for the Period June 3, 2009 Through September 30, 2009 [Docket No. 4455]

HEARING re First Application of Honigman Miller Schwartz and Cohn LLP as Special Counsel for the Debtors, for Interim Allowance of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from June 1, 2009 Through September 30, 2009 [Docket No. 4446]

HEARING re First Interim Fee Application of Jenner & Block LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses [Docket No. 4451]

HEARING re First and Final Application of Evercore Group L.L.C. for Compensation and Reimbursement of Expenses [Docket No. 4453]

HEARING re First Interim Application of the Claro Group, LLC for Allowance of Compensation and Reimbursement of Expenses for the Period June 1, 2009 Through September 30, 2009 [Docket No. 4506]

HEARING re Fee Examiner's Statement Concerning Fee Application of AP Services [Docket No. 5567]

HEARING re Fee Examiner's Motion for Clarification of Appointment Order [Docket No. 5483]

HEARING re Fee Examiner's Application to Authorize the Extended Retention and Employment of the Stuart Maue Firm as Consultant to the Fee Examiner as of March 8, 2010 [Docket No. 5431]

HEARING re Status conference regarding the Order Pursuant to 11 U.S.C. Sections 327(a) and 330 Authorizing the Debtors to Amend the Terms of Their Engagement with Brownfield Partners, LLC [Docket No. 5313]

HEARING re Request for Leave to File Claim [Docket No. 5178] and Request for Relief from Automatic Stay [Docket No. 5179], filed by Lisa Gross.

HEARING re Second Interim Fee Application of Jenner & Block LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses [Docket No. 5263]

HEARING re Second Interim Application of LFR Inc. for Allowance of Compensation and for Reimbursement of Expenses Rendered in the Case for the Period October 1, 2009 Through January 31, 2010 [Docket No. 5270]

HEARING re Second Interim Application of FTI Consulting, Inc. for Allowance of Compensation and for Reimbursement of Expenses for Services Rendered in the Case for the Period October 1, 2009 Through January 31, 2010 [Docket No. 5279]

HEARING re Second Interim Application of Jones Day, Special Counsel to the Debtors and Debtors-in-Possession, Seeking Allowance of Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses for the Period from October 1, 2009 Through January 31, 2010 [Docket No. 5285]

HEARING re Second Interim Application of the Claro Group, LLC for Allowance of Compensation and Reimbursement of Expenses for the Period October 1, 2009 Through January 31, 2010 [Docket No. 5290]

HEARING re Second Interim Application of Brownfield Partners, LLC as Environmental Consultants to the Debtors for Allowance of Compensation and Reimbursement of Expenses for the Period from October 1, 2009 Through January 31, 2010 [Docket No. 5291]

HEARING re Second Application of Butzel Long, A Professional Corporation, as Special Counsel to the Official Committee of Unsecured Creditors of Motors Liquidation Company, f/k/a General Motors Corporation, for Interim Allowance of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from October 1, 2009 Through January 31, 2010 [Docket No. 5293]

HEARING re First Application of Plante & Moran, PLLC, as Accountants for the Debtors, for Interim Allowance of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from October 9, 2009 Through January 31, 2010 [Docket No. 5294]

HEARING re Second Application of Weil, Gotshal & Manges LLP, as Attorneys for the Debtors, for Interim Allowance of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from October 1, 2009, Through January 31, 2010 [Docket no. 5295]

HEARING re Second Interim Application of Kramer Levin Naftalis & Frankel LLP, as counsel for the Official Committee of Unsecured Creditors, for Allowance of Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses Incurred for the Period from October 1, 2009 Through January 31, 2010 [Docket No. 5296]

HEARING re First Interim Application of Jones Day, Special Counsel to the Debtors and Debtors-in-Possession, Seeking Allowance of Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses for the Period from June 1, 2009 Through September 30, 2009 [Docket No. 4448]

HEARING re Final Application of Alan Chapell, Consumer Privacy Ombudsman, Appointed Pursuant to Section 332 of the Bankruptcy Code for Final Approval and Allowance of Compensation for Services Rendered During the Period From June 8, 2009 Through and Including October 4, 2009 [Docket No. 4456]

HEARING re Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. Section 105(a) and General Order M-390 Authorizing Implementation of Alternative Dispute Resolution Procedures, Including Mandatory Mediation (the "Debtors' ADR Motion") [Docket No. 4780]

HEARING re Debtors' Twelfth Omnibus Objection to Claims (Workers' Compensation Claims) [Docket No. 5326]

HEARING re Debtors' Objection to Proof of Claim No. 65796 Filed by Rudolph V. Towns [Docket No. 5384]

HEARING re Application of the Official Committee of Unsecured Creditors of Motors Liquidation Company for Entry of an Order Authorizing the Employment and Retention of Bates White, LLC as the Committee's Consultant on the Valuation of Asbestos Liabilities Nunc Pro Tunc to March 16, 2010 [Docket No. 5480]

Transcribed By: Clara Rubin

A P P E A R A N C E S:

WEIL GOTSHAL & MANGES LLP
Attorneys for the Debtors
767 Fifth Avenue
New York, NY 10153

BY: JOSEPH H. SMOLINSKY, ESQ. (TELEPHONICALLY)

GODFREY & KAHN S.C.
Attorneys for the Examiner, Brady Williamson
One East Main Street
Suite 500
Madison, WI 53701

BY: ERIC J. WILSON, ESQ.

U.S. DEPARTMENT OF JUSTICE
Office of the United States Trustee
33 Whitehall Street
21st Floor
New York, NY 10004

BY: ANDREW D. VELEZ-RIVERA, ESQ.

BAKER & MCKENZIE
Interested Party
130 East Randolph Drive
Suite 3900
Chicago, IL 60601

BY: ANDREW P.R. MCDERMOTT, ESQ. (TELEPHONICALLY)

BUTZEL LONG, A PROFESSIONAL CORPORATION
Attorneys for the Official Committee of Unsecured Creditors
380 Madison Avenue
22nd Floor
New York, NY 10017

BY: ERIC B. FISHER, ESQ. (TELEPHONICALLY)

DICONZA LAW, P.C.
Attorneys for LFR
630 Third Avenue
New York, NY 10017

BY: GERARD DICONZA, ESQ. (TELEPHONICALLY)

KELLY DRYE & WARREN LLP
Attorneys for Creditor, Law Debenture Trust Company of New York
101 Park Avenue
New York, NY 10178

BY: JAMES E. FARRAH, ESQ. (TELEPHONICALLY)

KRAMER LEVIN NAFTALIS & FRANKEL LLP
Attorneys for the Official Committee of Unsecured Creditors
1177 Avenue of the Americas
New York, NY 10036

BY: THOMAS MOERS MAYER, ESQ. (TELEPHONICALLY)

LOWE FELL & SKOGG
Interested Party
Republic Plaza
370 Seventeenth Street
Suite 4900
Denver, CO 80202

BY: DAVID W. FELL (TELEPHONICALLY)

MCCARTER & ENGLISH, LLP
Attorneys for Brownfield Partners
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102

BY: JEFFREY T. TESTA, ESQ. (TELEPHONICALLY)

MILBANK, TWEED, HADLEY & MCCLOY LLP
Interested Party
One Chase Manhattan Plaza
New York, NY 10005

BY: JEREMY S. SUSSMAN, ESQ. (TELEPHONICALLY)

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
Interested Party
1285 Avenue of the Americas
New York, NY 10019

BY: ABIGAIL CLARK, LAW CLERK (TELEPHONICALLY)

NEW YORK STATE DEPARTMENT OF LAW
Interested Party
BY: MAUREEN F. LEARY, AAG (TELEPHONICALLY)

AURELIUS CAPITAL MANAGEMENT
Interested Party
BY: DENNIS A. PRIETO (TELEPHONICALLY)

BROWNFIELD PARTNERS
Consultants to the Debtors
BY: STUART L. MINER (TELEPHONICALLY)

THE CLARO GROUP
BY: DOUGLAS DEEMS (TELEPHONICALLY)

LISA P. GROSS, IN PRO PER/PRO SE (TELEPHONICALLY)
Creditor

JAKE RODD, IN PRO PER/PRO SE (TELEPHONICALLY)

P R O C E E D I N G S

THE COURT: All right, good evening. Has the Weil firm now been able to link up with CourtCall?

MR. SMOLINSKY: Yes, Your Honor. This is Joe Smolinsky.

THE COURT: All right. Very good, Mr. Smolinsky.

And I have counsel for the fee examiner here in the courtroom.

All right, ladies and gentlemen, in the Chapter 11 cases of Motors Liquidation Corporation, formerly known as General Motors and Affiliates, I have eleven of an original seventeen contested matters before me, the remainder having been continued or having been resolved, relating to: interim fee applications by lawyers and other professionals for the estate and its creditors; the request by the fee examiner to extend the retention of a firm called Stuart Maue, which uses computer techniques to analyze fees, and which has been hired by the fee examiner as a consultant; the request by the fee examiner denominated as a clarification of appointment order for an order expanding the scope of its responsibilities beyond examining fees; for a continuance of the hearing on the second interim applications for fees; and a continuation of the final application for Evercore.

On these motions and applications, the fee examiner's objections are sustained in part and overruled in part. The

Maue firm's retention will be extended for a time sufficient for it to assist in the second round of fee applications, after which we'll do a stop, look and listen to see if the services it provides are worth the cost.

The fee examiner's requested clarification will be granted, and upon clarification the motion to expand the nature of the fee examiner's role will be denied.

The fee examiner's request for a continuance to give him further time for review will be granted.

And the fee examiner's request for a continuance of the Evercore application will be granted.

The specifics of my rulings and the bases for the exercise of my discretion in connection with these matters follow. But before getting to the specifics, some preliminary observations. Lawyers say about me, according to the Almanac for the Federal Judiciary which issues report cards for judges based on comments based by lawyers, that I closely review fee requests, and it's been said that I'm very tough on fees. Others say that I take a close look at them but I'm all right in the end and that I'm reasonable with respect to fees. But all of those lawyers are talking about the same judge -- me -- and the difference results from the inherent nature of fee requests.

Fee requests by their nature take money out of the pockets of creditors, so of course we judges care about them

and will be tough, as some lawyers say, in cases where we're uncomfortable with what we see. But we judges, especially those of us who've had large Chapter 11 cases on our watch for many years, hoping to keep companies alive, save jobs and get money into the hands of creditors, have come to understand that achieving those ends requires a lot of work and, necessarily, fees by the people who do the work. Though there's not a perfect correlation, since higher fees can result from a host of factors, such as thorny commercial issues such as environmental issues, intercreditor and interdebtor disputes, and even the need to replace corporate officers who've been indicted, our larger cases almost always result in larger fees and materially larger fees. The challenge for a judge is in achieving fairness in finding the appropriate balance between keeping the fees as low as is necessary to do the job and to maximize value for the creditor community without unfairly penalizing lawyers and others doing the work.

To his credit, the fee examiner here did what I would hope he would do: engaging in a dialogue with the parties to get more information and explanation when warranted, to secure voluntary reductions in instances of error on the part of professionals and, conversely, to drop objections when appropriate. He also could, and did, sometimes compromise issues of potential dispute, which comprises I would approve except in any instances wherein I thought the compromise was

beyond the range of reasonableness, and all of which comprises I find reasonable and approve today.

But if the parties can't agree, the matter goes to the judge. At the risk of stating the obvious, a fee examiner, like any examiner, is not a special master -- masters aren't authorized in bankruptcy cases (C.F.R. BP 9031) -- nor is he or she a judge. On those issues where agreement could not be reached, the judge must decide them.

Doing so, I sustain some of the objections and overrule others. Many of the issues apply to multiple applicants. The requested fees are largest with respect to Weil, and the largest number of issues applied to Weil, but when my ruling set forth general principles applicable to many, they'll of course apply across the board.

Turning first to the objections insofar as they involve Weil, and then turning first to the matter of retainers, the fee examiner suggested that amounts still on a pre-petition retainer should be applied to the fee awards for this period as compared and contrasted to being held on account of future payments risk. Weil has consented to this, and I'll so order it here for both Weil and any others similarly affected, because on the facts of this case I think that's the right thing to do.

But because everything we judges say in this court seems to have a life of its own, even when simply part of a

dictated decision, I'll briefly explain. Retainers are sought and held by lawyers as a hedge against the risk of not being paid in the future; that's in the nonbankruptcy context and also in the bankruptcy context. In the bankruptcy context, they're also important to ensure that the lawyer isn't a creditor of the estate at the time of the filing as a lawyer retained, as anything other than special counsel must be disinterested, as that expression is used in bankruptcy parlance.

The pre-petition receipt of a retainer, assuming that it exceeds the amount of fees due for pre-petition services, helps ensure that the lawyer isn't a creditor of the estate and in fact is the opposite. It creates a debt from the lawyer to the client to pay back the excess of any retainer over the value of the fees that were earned.

There's no hard-and-fast rule as to when I'll require a retainer to be applied to post-petition services. Since it's a debt to the estate that will need to be paid back if it isn't earned, but it may well be earned in the future, I determine, based on factors -- including the liquidity of the estate, its administrative solvency or insolvency, the extent of secured debt and assets that aren't secured creditor collateral, and the nature of any cash collateral obligations or conditions -- whether there's a risk of nonpayment in the future. If there's not, I'd be more inclined, as I'm more inclined here, to

require application of the retainer before the end of the case. If there is a material risk of nonpayment, I'd be less inclined to make the professional apply it to past services and, hence, go unprotected going forward. Here, I believe that there's no material risk of nonpayment going forward, and it's in the best interest of the estate that the retainer be applied sooner rather than later.

Turning next to summer associates and law clerks, the fee examiner objects to Weil's charges for summer associates and law clerks. I'm sustaining the fee examiner's objection to charges for summer associates but overruling his objection to law clerks. I think we need to slice and dice that objection a little more finely, because we're talking about different things.

Turning first to summer associates, I recognize that there's contrary authority in other districts, such as in the Recycling Industries case in Colorado, but as I ruled in earlier cases when that issue was presented to me, the best known of these being Chemtura, I don't approve payment for summer associate time. I've ruled that way based on lessons learned in thirty years in a large firm before I came on the bench ten years ago, in two of which I ran that firm's summer program. As I think I've stated the reasons that I've so ruled at greater length in one or more other decisions, I won't lay out now all of the reasons why I don't think summer associate

time is properly compensable, but I'll state some of them.

Summer associates aren't, of course, associates as we normally think of them; they're law students, most commonly who are two-thirds of the way through law school. They sometimes make valuable contributions, but they're hired principally as a recruitment device, not for their productivity, to get the best and the brightest law students before another law firm gets them. And with very few exceptions, they're dreadfully inefficient and require extraordinary handholding by more senior lawyers, even when, though it's often not the case, they've taken the course work or already had the training they need for the matters to which they're assigned.

Additionally, of course, I've noted over and over again, including in this case -- that is, in the GM case -- that I believe in the importance of consistency and predictability in bankruptcy cases and follow the earlier decisions of other bankruptcy judges, including myself, in the absence of manifest error. I'm staying true to that principle today.

By contrast, law clerks, which in this context means law school graduates who aren't yet admitted to the bar, have the benefits of law degrees and permanence. Subject to any other applicable considerations and reasons for disallowance, their time will generally be compensable, and I'm ruling that for any who are law school graduates it's compensable here.

Turning now to long billing days, I also have an expression of concern by the fee examiner as to lawyers billing more than twelve hours a day and an objection to compensation for two attorneys who worked an average of eighteen hours a day for eleven days. I assume that these hours were really worked; of course, if they hadn't I'd be ballistic, but there's been no suggestion or showing that such is the case. I won't disapprove those charges. Those of us with experience in large matters and large Chapter 11 cases, in this district and elsewhere, know that lawyers on those matters must from time to time work extraordinarily hard. And anyone who was present during the first six weeks of this case knows what was going on during that time. In fact, if I could bill by the hour, I'd be subject to much of the same criticism.

Turning next to vague entries, the fee examiner also challenges vague time entries in the timesheets supporting Weil's efforts. I accept as true Weil's response that the entries were made when the time pressure and number of matters that required immediate attention were extraordinary, but timekeeping is something that should be routine for a bankruptcy lawyer, and nonbankruptcy lawyers working on bankruptcy matters must learn to do it right as well or suffer the consequences of failing to do so, especially if they work at firms that have major bankruptcy practices. I agree with Weil that perfect compliance may not be commercially or

professionally practical, as, for example, might be the case if a lawyer is fielding many calls or doing many things in a single six-minute increment or is extraordinarily stressed or harried.

I think there's some room for taking those considerations into account, but I agree with the fee examiner that failures to comply with the guidelines must have at least some consequences. In this case, I agree with the fee examiner that many of the entries are too vague, including enough to support the fee examiner's recommendation that fifteen percent of the time charges supported by the allegedly vague entries be the subject of fee reductions. Thus, the fee examiner's objection in this regard and his request that fifteen percent of those time charges be disallowed will be sustained.

On first-class air travel, I'll sustain the fee examiner's objection as well, though I think that Weil has already addressed this on its own. While it's easier to work on a plane with the extra space that first class provides, the U.S. Trustee Guidelines provide that first-class travel will normally be objectionable, and here we got a commitment early in this case not to charge for first-class travel. While lawyers can still fly by that means, their firms will normally have to absorb the incremental cost. And here I'm ruling that under the facts of this case, professional firms will have to absorb the extra cost. I'm expressly not ruling on the

circumstances that could warrant an exception, other than to recognize the possibility that such circumstances could exist.

The fee examiner also objects to hotel rates charged. Of course, rates for hotels vary materially depending on the city involved. And though I've never stayed overnight in a New York City hotel, there seems to be no serious dispute that New York's rates are among the highest. I'm going to provide generalized guidance here and leave it to the parties to work the details out. To the extent that Weil or any other firm was paying no more than the going rate for business traveler-type hotels in New York City, I'll approve reimbursement for such hotel charges even if the rate for a room exceeds a defined price point, such as the 400 dollars per night that was mentioned. To the extent that any of the hotels stayed at were at luxury hotels more expensive than those normally used by business travelers or had rooms in those hotels which were at luxury-level rates, with two daily rates in particular that were described in the objection being a matter of concern to me, I'm disapproving reimbursement for the incremental cost and Weil will have to absorb it.

The fee examiner also objects to certain local transportation charges, contending that they should be regarded as overhead. I agree in part, but only in part. New York, unlike most other parts of the U.S., is not a city where most employees drive to work and where driving home in one's own car

is an option. And exigent needs, including, by way of example, when one is working the great bulk of the day and late in the day for a single client, can make charging a taxi or car service home appropriate. On the other hand, where there is a lesser strain on the lawyer, charging a debtor client may be inappropriate.

Which side of the line that the issue falls on will at least generally be fact-specific, and it is here as well. Weil's local transportation policy generally conforms to that historically considered to be appropriate in this Court and to the policies in place at other law firms. But I agree with the fee examiner that, to the extent that local transportation was charged for after the closing with New GM, charging the estate for local transportation would be inappropriate. The fee examiner's local transportation objections in this regard and to this extent will be sustained.

The fee examiner also objects to certain personal expenses, including reimbursing lawyers for costs they incurred when they had to cancel vacations, and paying laundry expenses for out-of-town lawyers working in New York. While I agree that it was appropriate as a matter of human decency for Weil to pay those charges, I think that under all the circumstances Weil should have absorbed them as overhead, to the extent it did not already do so, which I believe it did do on its own for the vacations. The fee examiner's objections in this regard,

to the extent not moot, are sustained.

Turning now to double-billing, nonworking travel time, and mistakenly charged expenses, the fee examiner found instances of double-billing, nonworking travel time and mistakenly charged expenses. I sense that when the fee examiner discovered them and called them to Weil's attention, Weil agreed to make the corrections immediately and without objection. To the extent, however, that they're not moot, the fee examiner's objections in these areas will be sustained.

The fee examiner also challenges about 53,000 dollars in charges for miscellaneous expenses, of which about 44,000 was for a hotel's food, beverage and miscellaneous charges for creditor meetings, and about 9,000 dollars in miscellaneous charges that was not documented until Weil filed its response to the fee examiner's objections.

The creditors' meetings were for the organizational meetings -- meeting of creditors and for a 341 meeting. I'm not troubled by a debtor paying such charges. It's common, if not also customary, for debtors to pick up the tab for those things. And I remember back in my first life as a lawyer that when I represented a debtor estate in a medium or large Chapter 11, we would advance those funds as a courtesy or service to the U.S. Trustee. Likewise, if the debtors hadn't advanced those charges and instead stuck them on the U.S. Trustee, or the creditors' committee for example, I'd approve reimbursement

from the estate to whomever picked up those charges. So I'm not troubled by the debtors paying them, and I'll overrule that objection to the extent that it remains after the debtors explained exactly what they spent the money for.

Likewise, while I understand why the fee examiner objected to the previously unexplained additional miscellaneous charges and would have preferred that they be explained before they became a subject of a fee examiner objection, Weil has now satisfactorily explained them. It's explained that they were for an invoice for electrical services incurred by Weil, at the request of GM, for setting up the CEO's press conference held at Weil on the day Chapter 11s were -- the Chapter 11 cases were commenced. As Weil fairly observed, that was one of the most important days in GM's history. Such an expense is entirely reasonable.

Weil has now provided an invoice for the electrical services and I would think that its doing so puts the matter to rest. I'm not going to require that Weil get an itemization from the electrical contractor of labor hours or itemized material charges; I'm a little surprised that such was even requested. If payment for electrical services have been made by GM instead of Weil, the cost would have been exactly the same and the issue would not have come up. This isn't the first time that a lawyer advanced the funds for a client's otherwise reasonable expenses, and I'm confident that it won't

be the last. Since the underlying expense is for an entirely understandable purpose, I won't disapprove reimbursement for it now.

I should say in this connection, however, that the controversy as to this alerts me as to an underlying issue: The failure to simply provide the electrical services invoice from the outset resulted in a back-and-forth which had its own costs associated with it. On matters relating to disbursements, I think time charges might be in a different category, as discussed in connection with the Kramer Levin application below. I'm going to require going forward that backup be either provided or, perhaps more realistically, be made available for inspection on request routinely from the outset so a fee reviewer needn't do anything more than say I need to see it. The idea is to save creditors the cost of the back-and-forth. I don't think that's as practical for explanation as to why services were performed or were reasonable, matters that I discuss below, but I think that, for disbursements, making that backup available is no big deal.

Turning now to the billing rates and the request for the five percent reduction, the most emotional issue that I need to address is whether I should require Weil, creditors' committee counsel Kramer Levin, and any others similarly situated to discount their rates by five percent, not because work wasn't performed or was otherwise reasonable but because

other firms might have lower hourly rates and/or voluntarily offered the discount.

I welcome and applaud the voluntary steps taken by those others, but as a judge I'm not authorized to dock professionals for otherwise reasonable claims for their services based on private notions of propriety, either the fee examiner's or my own, especially by a mechanical and arithmetic computation. Rather, I think that a request of that character must be analyzed under the law and then under the applicable facts.

As a matter of law I haven't been shown any basis in the code or case law for imposing what amounts to an arbitrary reduction of five percent or any other figure. Those who have appeared before me know that I start my analysis of matters under the code with textual analysis, and that I also rely heavily on case law precedent. Authority from either source for honoring that request is conspicuously lacking. See, for example, the fee examiner's Weil objection at paragraphs 22 to 44.

While I try to get a fair result in every case I do so in the context of statutory provisions that Congress has provided for the use of the judicial branch, and of case law that's developed over the years. I'm extraordinarily uncomfortable in departing from the code or the case law.

As a factual matter everyone acknowledges the efforts

and success in Weil's representation which, as the fee examiner noted were Herculean. And it appears to be agreed that attorneys at Weil, "Worked hard when required but did not unnecessarily or inappropriately record time." The efforts were performed in the context of a case with liabilities of 172 billion, with a capital B. See 407 B.R. at 475. The efforts helped save the jobs of 235,000 employees worldwide, 95,000 of whom were in the U.S., and saved thousands of additional jobs at GM's suppliers.

In general, at least, lawyer's fees are set in the marketplace. And the fees are at market rates. I'm reluctant to question them in the absence of statutory or case law authority to do so. To be sure, if it were shown that a firm's rates for lawyers, subject to fee review, were higher than those for its lawyers performing similar services on non-bankruptcy matters, and hence did not fully conform to the rates in the marketplace, that would be a matter of concern for me, which is why I asked the questions at argument that I did. But there having been no showing of that matter of concern here, I don't need to address any issues with respect to that today. For these reasons I won't require the requested discounts.

Turning now to the Kramer Levin application, starting first with summer associate time and law clerk time, several of the rulings I just made apply equally to the Kramer Levin firm,

counsel to the creditors' committee. I won't repeat them now. For the reasons stated in my rulings on the Weil application I'm sustaining the fee examiner's objection to Kramer Levin's summer associate time, and overruling them with respect to permanent lawyers with law degrees who are not yet admitted to the bar.

Turning next to clerical and administrative tasks, vague and repetitive entries, and block billing, likewise by reason of an analysis that's essentially factual I'm sustaining the fee examiner's objections to billing for clerical and administrative tasks, resulting in a 16,000 dollar reduction.

I'm also sustaining the fee examiner's objections in part to the vague and repetitive entries and block billing. I'm sustaining them to the extent of requiring a 30,000 dollar reduction for vague and repetitive entries, and 50,000 for block billing. I sustain those objections in part, but only in part, by reason of the difficulty in describing certain activities with greater precision, and because if many of the more discrete tasks were separately described doing so would consume much of the day.

I agree with Kramer Levin's contention that the purpose of the block billing rule is to correct abuse where it might appear that lawyers are "running the clock" to fill idle hours. And if I were ever to see that I'd not just disallow the time but consider sanctions. But there's no evidence in

the record to suggest that such a concern would have any applicability or relevance here.

As I noted previously, the fee examiner is right when he says that failures to comply with applicable rules and guidelines must have consequences. Thus, I'm imposing the consequences I've described here. But I also believe that the circumstances at the time the services are performed and the practicalities of perfect compliance must be weighed in assessing the penalty for non-compliance. Under all the circumstances I believe the adjustments described above best balance the competing interests.

Turning next to billing rates and five percent reduction requests for Kramer Levin, as I indicated, I'm overruling the objection seeking the arbitrary five percent reduction in fees for reasons I discussed in connection with Weil as a matter of law. I'm also overruling them for similar, though not identical, reasons based on the facts of the case, which include the skill Kramer Levin brought to this case, presumably aided in material part by its experience in Chrysler. The reasons that are based in fact, as contrasted to law, overlap with those based on the contentions that Kramer Levin engaged in unnecessary work to which I turn next.

In that connection and additionally, I disagree with the fee examiner's contentions that work Kramer Levin did was unnecessary or excessive. Rather, I find as a fact to the

contrary. While I recognize that the fee examiner wasn't here during the first six weeks of this case, I was, with the possible exception of the creditors' committee counsel in Adelphia where the fee committee that I had there did not make a similar recommendation. And even though the fees in Adelphia, as a percentage of debtors' fees were much higher, principally I think by reason of major litigation brought by the Adelphia creditors' committee against secured lenders, I've never seen a creditors' committee counsel perform as effectively and economically in a Chapter 11 case on my watch, as I saw Kramer Levin perform here.

But, first, as a preliminary matter a threshold issue. How much detail must a professional put into a fee application to show that its work was necessary and appropriate? I have no memory of having had to rule on this before, or having seen any other judge's answer to this question, but I think the answer to this is at the easier end of the spectrum of the issues I need to address today. There should be enough detail in the fee application to make a prima facie case and to touch the basis. But I think it would be wrong for courts or U.S. Trustee personnel or fee examiners to require an exegesis on matters of necessity and reasonableness. If we were to do that it would require much more work on the part of the professional than the preparation of the fee application, especially if the application were to be filed on paying of fees disallowance.

Most of the time the need for the work to be done, and much of the work that was done, will be obvious to the major constituencies in the case and to the judge, and there is no reason in my view to require extra detail in the fee application, or argumentative or persuasive writing in the fee application to bolster reasonableness or necessity, which extra writing would only have to be paid for by the estate or its creditors.

Rather, I think that in those rare cases where the need for the services or the professional's work is in question, the matter would be better addressed by providing answers to questions informally and, if necessary, addressing them in the courtroom, as, of course, was done here. I don't want to create a rule that requires professionals to put even more work at resulting greater expense into their fee apps when such usually will not be necessary.

Here, based on facts of which I'm aware by judicial notice of the case on my watch, and by Kramer Levin's supplemental showing, I can and do easily find that Kramer Levin's services were substantial, necessary and reasonable.

Kramer Levin faced challenges in this case because like most creditors' committee counsel it wished to maximize the recovery for the unsecured creditors' community. But it couldn't do so in a way that would blow the 363 sale, by which the creditors would be fragged by their own grenade.

As I ruled in my Section 363 decision, which now has been affirmed by two judges of the district court, apart from a third judge's ruling on a stay application, the alternative for the unsecureds in this case to the 363 sale was liquidation, a disastrous result.

Kramer Levin had some very sympathetic members of its constituency, most significantly tort victims. But if it pushed too hard to advance unsecured creditors' interests, or the interest of any subset of them it could poison the deal by which all in the unsecured creditors' community would do much better. It negotiated an additional assumption of liabilities by New GM that may benefit hundreds, if not thousands, of people injured in accidents. A result whose desirability nobody in this case I think would quarrel. It also negotiated a 225 million dollar increase in the war chest for administrative expenses, to which I'll turn in a moment.

The great bulk of the consideration for the 363 sale and the amount that would effectively go to unsecureds estimated to be six billion dollars, at the time was in the form of New GM stock, which creditors would want to be able to trade consistent with the federal securities laws, and which would require an 1145 exemption obtainable only under a confirmed plan. And I well remember Kramer Levin's efforts to increase the size of the funding for administrative expenses by 225 million dollars, so as to better enable a confirmable plan.

Securing that additional 225 million dollars would decrease risks of the need to sell some of that New GM stock privately, which if it had to be done would reduce the stock available for the unsecured creditor community. This was a major accomplishment for which I think Kramer Levin justly may claim credit.

I also cannot agree with the fee examiner's dismissal of the Kramer Levin attention to environmental claims, which for the debtors, creditors and me were and are still matters of substantial concern. As evidenced most recently in Lyondell Chemical and Chemtura, two other massive cases on my watch, with material environmental concerns the interplay between environmental law and bankruptcy is among the most difficult issues that parties in bankruptcy cases and bankruptcy judges face.

Material environmental liabilities could and still may massively affect creditor recoveries. It's no wonder that Kramer Levin spent time on these issues. I would have been surprised and disappointed if it had not.

Likewise, I've considered the other suggestions that Kramer Levin overworked the case, and as findings of fact reject them.

Accordingly, I overrule such objections and decline to reduce Kramer Levin's compensation based on those factual premises.

Turning last in the Kramer Levin case to matter descriptions, the fee examiner also objects to Kramer Levin's use of many detailed categories to describe the work Kramer Levin performed. Contending that work in many areas that the fee examiner would have preferred to consider in a combined way were separately described, making the fee examiner's work more difficult. I assume that the way Kramer Levin did it did make the fee examiner's work more difficult. But Kramer Levin argues that such was required under this Court's local court rules, and Kramer Levin is right in this regard. More specificity in my view is a good thing, not a bad thing. In any event, whatever one's preferences may be for best practices in data gathering and presentation, and even assuming that it made the work for the fee examiner more difficult, I will not penalize Kramer Levin for recording its time with the greater specificity that its use of more categories entailed.

Turning next to FTI, FTI's issues are largely subsumed within my earlier rulings, with one material exception. The fee examiner objects to the amount of time FTI incurred on firm retention and compensation maters, contending that it should be capped at five percent of the amount of the total billings in the absence of extraordinary circumstances. But FTI responds that the objection has an insufficient time to reasonableness. And, in particular, fails to take into account that the value of the services provided by a professional like FTI might

exceed the cost of the monthly payments that had to be made under the retention. More importantly, FTI argues that its fee was based on a fixed fee arrangement. And that when FTI did more work, as it might, for example, if it were asked to do more on something other than retention or compensation, FTI wouldn't get anymore compensation for doing so.

Though, neither sides has provided me with any cases on point, and the matter is, so far as I'm aware, one of first impression that I've never seen in the thirty-seven years since I started in the bankruptcy business, I agree with FTI as to this issue. Though hourly rates for professionals retained on a fixed basis are computed and analyzed by many of us, we judges require those hourly rate equivalents computed to help protect the estate against windfalls, not because those hourly equivalents for those compensated on a fixed fee basis, have independent legal significance.

Where the fee is on a fixed fee basis irrespective of hours worked, the extra time spent on a retention or fee application doesn't matter. I see no basis in law or equity for docking the professional based on a perception that the professional put in more work on retention or anything else than the one questioning the fee application regards as reasonable.

Turning now to Butzel Long, the fee examiner also objects in part to the fee request of Butzel Long, co-counsel

to the creditors' committee, seeking a disallowance of about 46,000 dollars in fees. I sustained the fee examiner's objection to summer associate time for the reasons I've described above. But the fee examiner's principal objection is to costs incurred incident to getting Butzel Long retained as the cost of the retention effort amounts to about twenty-three percent of Butzel Long's total fees for that period. That's because the remainder of Butzel Long's fees were relatively modest during that time.

The fee examiner's objection raises what amounts or almost amounts to a philosophical issue. How do we treat the cost of getting retained, which is compensable under applicable law and which largely is a fixed cost, when the actual work to be done is modest, or is modest in the applicable fee period? Though, neither side has presented me with any authority on point, I think the answer must be that such time is compensable. And that if we think the substantive work to be done by the professional to be retained is so de minimis that the retention costs will be disproportionately high, we should think about that before retaining the professional in the first place.

I start with the recognition that the cost of getting retained is compensable under the case law and that within broad limits it's largely a fixed cost. There isn't a suggestion here, and there normally won't be a suggestion in

most large Chapter 11 cases, that the professional can get itself retained materially more cheaply. In fact, I don't want people cutting corners on their retention applications, as we all agree on the importance of full disclosure of connections and potentially adverse interests, and we want thorough conflict checks. So the ratio of retention costs on the one hand, and costs for services for the real work, if I can call it that, on the other, is a function not so much of the retention costs as it is for the size and scope of the real work performed and to be performed. And it will sometimes be the case as it is here that the real work will be modest in one fee period, but may be much greater in the later period. Of course in that case the objection will likely be moot, because it would be unfair to dock the professional for work performed in period one when the work performed in period two is much greater.

But if it isn't, that raises questions as to the wisdom of hiring the professional. But I think it's better for the fiduciaries for the estate and its creditors to consider whether the professional should be hired if the service will be de minimis before retaining the professional in the first place.

Since fees are based on the reasonableness of the services performed, and in most cases the retention application, itself, will have been prepared for a reasonable

price, it's hard to find a statutory or even commonsense basis for denying compensation for a professional's necessary efforts in getting itself retained. And I won't disapprove that component of the fee application here for that reason.

Turning next to Claro Associates, the fee examiner also objects to the application of Claro Associates, a consulting firm that helped GM address its environmental responsibilities. He seeks to disallow about 35,000 of the 190,000 requested, which is about 18 percent of the total fees, down from an earlier 41,000 dollars which was roughly 22 percent of the total.

Many of the problems seem to arise from the fact that Claro was guilty of classic vagueness and bulk billing offenses which in turn seem to arise from the fact that Claro isn't accustomed to the higher standards of detail and of explanations for work performed that we customarily expect in bankruptcy cases, and that Claro did the work that it did without complying with those rules.

Claro billed for its time in half hour increments rather than the tenths of an hour that we require; used descriptions of its services broader than those that we require; described its work in terms that we'd regard as excessively vague, and put professionals to work on matters that could fairly be characterized as administrative or clerical.

The objections to these practices were well taken, and as I've noted above, failures to comply with applicable court rules and guidelines should have consequences. But I think that in determining the appropriate penalty it's appropriate to consider whether an entity is a regular player in the bankruptcy system and should know better. I also think that it's not just appropriate but critical to consider whether the professional was previously warned or otherwise advised of the need to comply, as parties in this case will be warned and advised for their services going forward.

Here I can't wholly close my eyes to Claro's failures to do a better job in substantiating its fee request and think some penalty is appropriate. But for an entity that doesn't regularly provide services to the bankruptcy community and hasn't previously been warned, I think that the penalty that's been proposed is excessively punitive.

While I'd likely agree with the fee examiner if he'd noted the same deficiencies by a law firm, accountant or financial advisor that's more frequently retained in bankruptcy cases, I'm not going to be that harsh on a relatively small player providing environmental remediation counseling here for this first offense. The fee examiner's proposed disallowance will be reduced from 35,000 to 18,000 with the consequence that Claro's fee application will be reduced by the 18,000 dollars which I still think must be imposed.

Turning now to AP Services. AP Services, the crisis managers now serving and for all practical purposes running Motors Liquidation, disputes the fee examiner's contention that AP Services is subject to fee examiner review, right to audit, and right to object to the compensation of AP Services. It contends that the fee examiner's authority applies only to retained professionals in the case.

While a reading of the relevant orders would at least seemingly support AP Services' position in this regard, the dispute isn't yet ripe for a decision as the fee examiner hasn't tried to audit or object to AP Services' fees and the fee examiner hasn't responded to the points AP Services made in its objection, presumably being consumed with the many fee applications to which the fee examiner has objected.

Accordingly, I'm not deciding these issues today. If there is an objection, AP Services can dust off and re-file its submission, or if it prefers give me a new one. And each side will now have a reservation of rights with respect to these issues.

Finally, the fee examiner objects to the fee request of Evercore, the debtors' investment banker. The fee examiner contends that the request is premature but goes on to seek the disallowance of particular itemized disbursement amounts. I agree that it's premature because Evercore's remaining entitlement will be subject to a condition that hasn't

transpired yet, and while most parties won't have the right to object to reasonableness hereafter, the U.S. Trustee's office will. So I don't think I can or should issue substantive rulings on Evercore today, including on the disbursements. They can be considered when the much more substantial payment to Evercore comes up for review or is otherwise up for allowance.

Turning next to the U.S. Trustee Office's response. The U.S. Trustee requests a ten percent deferral of payment or a, quote, "holdback" of fees. That request is granted. As I've stated many times before, albeit only, I think, in dictated decisions, holdbacks are imposed for two reasons. They're a hedge against uncertainty in the future of the case, and in particular the risk of administrative insolvency, and they function as a carrot to incentivize professionals to get the case wrapped up and to get plan consideration into the pockets of creditors.

In this case the unsecured creditors are relying on their receipt of stock and warrants that can be distributed consistent with the requirements of the federal securities laws only if and when a plan is confirmed. And if the administrative expenses get too high and can't be paid in cash, some of that critically important stock may have to be sold to keep the plan together.

Thus, while I have no reason to doubt the diligence of

the professionals in this case, I'm going to grant the U.S. Trustee's request. This ruling is without prejudice, however, to any later request that I reduce the holdback to five percent when the debtors' environmental issues are settled or judicially resolved and to any request that I reduce the holdback to zero percent when the debtors have accomplished that -- that is, the environmental resolution -- and also have filed a plan that has creditors' committee's support. For now, however, the U.S. Trustee's request is granted, and the ability to reduce the holdback further will await those other major forward steps in the case.

As the U.S. Trustee's other principal point was that she generally concurs with the fee examiner's suggestions -- see U.S. Trustee response at page 9 -- I needn't address them separately now.

Then in a point applicable to all or many of the applicants, or at least all that are law firms, the fee examiner asked me to approve scrutiny of contracts with electronic research services like Westlaw and Lexis. I'm declining to provide for that and here's why. Applicable rules and guidelines already prohibit professionals from making a profit on disbursements. And I don't understand expenses for electronic research like Westlaw and Lexis to be an exception. And if I'm not mistaken, professionals must certify that they're not making a profit, and I of course regard a false

certification to be serious business.

If certifications are no longer required -- I haven't gotten into the details of my cases on that issue in a long time -- I'd order in a heartbeat that parties do so certify if anyone wants it. But I'm not sure if it's appropriate for a judge, much less a fee examiner, to tell lawyers how they should do their research or, especially, whether they should or should not do it by electronic means for cost or for other reasons.

Also, the particular circumstances of a firm could affect its decision as to how to get its research done as, for example, whether the firm has alternatives such as the hard copies of books and what the costs of various alternatives are. For example, the U.S. courts, in a cost saving measure, are trying to get judges to do away with reading books and to rely on electronic services. They're asking us to do exactly the opposite of what the fee examiner would want to explore here.

So long as nobody is making a profit on legal research I don't think it's appropriate for me to rule on this issue on a one off basis. Any law firm will use its law library and electronic research services to meet its needs in serving many clients. And this goes too close to the matter of professionalism or a matter of professionalism, how lawyers do their jobs, for my comfort. Imposing a requirement in this area would go beyond adjudication; it would amount to rule

making.

Any requirement for when electronic research materials might appropriately be used would require, in my view, at the least, a local court ruling issued after an opportunity for public comment. And if we're not going to have that any time soon, at least, it's unnecessary and inappropriate to make lawyers hand over their contracts with their electronic research providers.

For the foregoing reasons, the fee examiner's objections are sustained in part and overruled in part. To the extent that the fee examiner did not object or consensually resolved its objections, fees are approved and the resolutions of those objections are ratified and approved by me.

I'm not going to micromanage the further proceedings by getting involved in applying my rulings to individual time entries. You're to apply the rulings and principles I articulated to the individual fee applications involved and agree on the fees that are appropriately payable now in accordance with those rulings.

If you somehow can't agree we can address any issues by conference call off the record, or if anybody wants it, on the record. Except as disallowed as a consequence of my rulings described above, the professionals can and should be paid up to the level of the U.S. Trustee holdback level that I likewise described above.

Finally, I ruled on the request for the Maue retention extension, the motion for clarification, and the second interim fee applications' continuance in the hearing itself earlier today. I explained the reasons that would underlie my rulings in the tentatives that I announced then. I see no reason to repeat or amplify upon them now.

I would ask the debtors, if they're willing, to take the lead on converting my ruling into an order after each of the individual professionals have had an opportunity to agree or at least confer with the fee examiner on the implementation of this ruling. I would like the parties to get the supplemental distributions that would be occasioned by this as early as is practical with due regard to the highest priority, which is the underlying needs of the Chapter 11 case.

Folks, it's been a very long day and evening. It's now after twenty to 7. We're adjourned. Have a good evening. Thank you.

(Proceedings concluded at 6:42 PM)

I N D E X

R U L I N G S

DESCRIPTION	PAGE	LINE
The Maue firm's retention will be extended for a time sufficient for it to assist in the second round of fee applications.	15	1
Motion of the fee examiner for clarification of appointed order, granted, and upon clarification the motion to expand the nature of the fee examiner's role will be denied.	15	6
Request of the fee examiner for a continuance to give him further time for review, granted.	15	9
Request of the fee examiner for a continuance of the Evercore application, granted.	15	10

R U L I N G S (cont'd.)

DESCRIPTION	PAGE	LINE
Amounts still on a pre-petition retainer should be applied to the fee awards for this period as compared and contrasted to being held on account of future payments risk.	17	18
Objection of the fee examiner to charges for summer associates, sustained.	19	10
Objection of the fee examiner to charges for law clerks, overruled.	19	11
Objection of the fee examiner to charges for long billing days, overruled.	21	7
Objection of the fee examiner to vague time entries and his request that fifteen percent of those time charges be disallowed, sustained.	22	14
Objection of the fee examiner to charges for first-class travel, sustained.	22	15

R U L I N G S (cont'd.)

DESCRIPTION	PAGE	LINE
To the extent that Weil or any other firm was paying no more than the going rate for business traveler-type hotels in New York City, such reimbursement for hotel charges, even if the rate for a room exceeds a defined price point, is approved.	23	11
Objections of the fee examiner to reimbursement to Weil for charges for local transportation in connection with work performed after the closing with New GM, sustained.	24	16
Objection of the fee examiner regarding charges for personal expenses, to the extent not moot, sustained.	25	1
To the extent issues relating to double-billing, nonworking travel time, and mistakenly charged expenses are not moot, the fee examiner's objections are sustained.	25	9

R U L I N G S (cont'd.)

DESCRIPTION	PAGE	LINE
Objection of the fee examiner to 44,000 dollars for miscellaneous expenses, to the extent it remains after the debtors explained exactly what they spent the money for, overruled.	26	2
Objection of the fee examiner to 9,000 dollars in miscellaneous charges, overruled.	26	15
Objection of the fee examiner to charges for clerical and administrative tasks, sustained, resulting in a 16,000 dollar reduction.	30	9
Objection of the fee examiner to charges for vague and repetitive entries are sustained in part, to the extent of requiring a 30,000 dollar reduction for vague and repetitive entries, and 50,000 for block billing.	30	14

R U L I N G S (cont'd.)

DESCRIPTION	PAGE	LINE
Objection of the fee examiner to billing rates and arbitrary five percent reduction requests for Kramer Levin, overruled.	31	14
Objection of the fee examiner to Kramer Levin's use of many detailed categories to describe the work Kramer Levin performed, overruled.	36	14
First interim application of FTI Consulting, Inc. for compensation and reimbursement of expenses for the period from 6/3/09 through 9/30/09, approved.	37	19
Second interim application of FTI Consulting, Inc. for compensation and for reimbursement of expenses for the period from 10/1/09 through 1/31/10, approved.	37	19

R U L I N G S (cont'd.)

DESCRIPTION	PAGE	LINE
Objections of the fee examiner to the fee request of Butzel Long, seeking a disallowance of about 46,000 dollars in fees, overruled.	40	3
The fee examiner's proposed disallowance to the application of Claro Associates to be reduced from 35,000 to 18,000 dollars.	41	23
Request of the U.S. Trustee for a ten percent deferral of payment or a holdback of fees, granted, with option to reduce holdback as detailed on the record.	43	10
Request of the fee examiner to approve scrutiny of contracts with electronic research services like Westlaw and Lexis, overruled in part and sustained in part. To the extent the fee examiner did not object or consensually resolved its objections, fees are approved and the resolutions of those objections are ratified and approved.	44	20

R U L I N G S (cont'd.)

DESCRIPTION	PAGE	LINE
Ruling on the fee examiner's statement concerning the fee application of AP Services, reserved.	42	15

C E R T I F I C A T I O N

I, Clara Rubin, certify that the foregoing transcript is a true and accurate record of the proceedings.

Clara Rubin

Digitally signed by Clara Rubin
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Reason: I am the author of this document
Date: 2010.05.03 15:45:48 -04'00'

Clara Rubin

AAERT Certified Electronic Transcriber (CET**D-491)

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: May 2, 2010